

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

THE NEW SCHOOL UNIVERSITY
Employer

- and -

Case No. 2-RC-22221

THE NEW SCHOOL SECURITY GUARDS INDEPENDENT UNION
Petitioner

- and -

**THE BROTHERHOOD OF SECURITY PERSONNEL, OFFICERS
AND GUARDS INTERNATIONAL UNION**
Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Wilfredo Perez, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding¹, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that The New School University (the "Employer"), a not-for-profit corporation with a campus located in New York, New York, is an institution of higher learning. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of one million dollars, and purchases and

¹ The briefs filed by Counsel to the Petitioner, Intervenor and Employer have been carefully considered.

receives at its New York, NY facility goods and supplies valued in excess of fifty-thousand dollars directly from suppliers located outside of the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties were unable to stipulate to the labor organization status of the Petitioner, The New School Security Guards Independent Union.² Willie Hill, employed by the Employer as a security guard, testified that he and other security guards employed by the Employer formed an organization called The New School Security Guards Independent Union, of which he is the acting president. According to the testimony of Hill, the purpose of the organization is to improve terms and conditions of employment such as wages and medical benefits through negotiation with the Employer, and to handle employee grievances. A constitution for the organization has been drafted. The New School Security Guards Independent Union has filed an "LM1" form with the Department of Labor, and has opened a bank account. Hill further testified that The New School Security Guards Independent Union is not affiliated with any other union.

² The Employer requests that I change Petitioner's name on the ballot, claiming that Petitioner's use of the words, "New School" in its name will cause voter confusion. The Employer claims that the presence of the words "New School" may give voters the incorrect impression that the Employer is involved or associated with the Petitioner. The cases relied on by the Employer in support of this contention are not applicable. In *Anheuser Busch, Inc.*, 102 NLRB 800 (1953), the Board, in order to avoid voter confusion, eliminated the characterization *after* one of the labor organizations name that stated, "formerly known as Joint Local Executive Board of International Union of United Brewery, Flour, Cereal and Soft Drink Workers, AFL." In *Greenpoint Sleep Products*, 128 NLRB 548, 550 fn.3 (1960), also cited by the Employer, the Board, where the Petitioner and the Intervenor had the same numerical designation "601," removed the designation "No. 601" from the name of the Petitioner, in deference to a State Court decree enjoining the Petitioner's use of that numerical designation. The Board in *Greenpoint* noted that, "[t]he Board's customary practice is to permit a union's name to appear on the ballot as specified by it where, in the Board's opinion, the designation will not create confusion in the minds of the voters as to the identity of the participants in the election." In this case the likelihood of confusion between the Petitioner, clearly identified as a "union" and the Employer is remote, in my judgment. Moreover, any limited confusion can be ameliorated during the election campaign by any party that believes it to be appropriate to do so. Finally, while the Employer states that Petitioner is using an employer trademark without authorization, there has been no court finding in that regard and the issue is not appropriately raised in this forum.

The Intervenor introduced into evidence a flyer announcing a meeting, led by Local 169, Union of Needletrades Industrial and Textile Employees (Unite!), called to discuss representation of the security guards. According to Hill, the guards initially contacted Local 169 regarding representation of the guards. Hill testified that after learning of a potential problem with Local 169 representing security guards, the group of security guards decided to form an independent union and have had no further contact with Local 169.

Section 2(5) of the Act provides that a labor organization “means any organization of any kind, or any agency of employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

In order to meet the qualifications of Section 2(5) of the Act, there are no requirements of any specific structural formality. See *Butler Manufacturing Co.*, 167 NLRB 308 (1967). The Board has set forth its basic policy in determining whether an entity satisfies the requirements of Section 2(5) of the Act in *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962).

Based on the evidence in the record that employees participate in the labor organization and that the organization was formed for the purpose of dealing with an employer concerning terms and conditions of employment, I find that Petitioner satisfies the requirements set forth in *Alto Plastics* and is a labor organization within the meaning of Section 2(5) of the Act.

While the Intervenor suggests that Petitioner is affiliated with a labor organization that admits non-guards guards to membership, the record evidence reveals that although Petitioner had an initial contact with a labor organization, Local 169, that contract was limited and ceased completely after that initial contact. Thus, it appears from the evidence that the Petitioner is not now affiliated with any labor organization. Further, the record is silent on what, if any other support or assistance that the Petitioner received from Local 169. Section 9(b)(3) of the Act provides that “no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such

organization admits to membership or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” Based on the record, I cannot conclude that a basis exists to disqualify Petitioner under Section 9(b)(3) of the Act.

While there was no stipulation on the record as to the labor organization status of the Intervenor, The Brotherhood of Security Personnel, Officers and Guards International Union, counsel to the Petitioner stated on the record that Petitioner was not contesting its status as a labor organization under the Act. The Employer did not dispute the Intervenor’s status as such, and is currently a party to a collective-bargaining agreement with the Intervenor.³ Based on these factors, and by taking administrative notice of prior cases before me involving the Intervenor, I find that The Brotherhood of Security Personnel, Officers and Guards International Union meets the requirements of a labor organization under Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

The parties stipulated that there exists no contract covering the employees in the unit sought in the Petition which would bar the holding of an election in this case.

5. Petitioner seeks to represent a unit of all security guards employed by the Employer excluding all other employees, professional employees, and supervisors as defined by the Act .⁴

I find that the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

³ Counsel for the Employer stated on the record that a contract between it and the Intervenor expires either June 4 or 5, 2000. The Petition, filed on March 28, 2000, was therefore timely filed.

⁴ The unit description was amended at the hearing.

Included: All full-time and regular part-time security guards employed by The New School University.

Excluded: All other employees, professional employees, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.⁵ Eligible to vote are those in the unit were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁶ Those

⁵ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held that Section 103.20 (c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

⁶ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **May 1, 2000**. No

eligible shall vote whether they desire to be represented for collective bargaining purposes by The New School Security Guards Independent Union or The Brotherhood of Security Personnel, Officers and Guards International Union.⁷

Dated at New York, New York
April 24, 2000

(s) *Daniel Silverman*

Daniel Silverman
Regional Director, Region 2
National Labor Relations Board
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Code 339-7575-7550

extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁷ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **May 8, 2000**.